



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
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OCT 12 2017

OFFICE OF
THE REGIONAL ADMINISTRATOR

Mr. Ed Galbraith, Director
Missouri Department of Natural Resources,
Division of Environmental Quality
P.O. Box 176
Jefferson City, Missouri 65102

Dear Mr. Galbraith: 

Thank you for your letter of September 18, 2017. Your letter provides MDNR's response to EPA's proposed inspection list for Fiscal Year 2018, and also addresses more broadly the principle of cooperative federalism and the state's desire to revisit our respective roles in implementing federal programs which have been delegated to the State of Missouri.

With respect to inspections and enforcement, we agree with the basic principle you articulated. We agree that the MDNR should be the primary day-to-day implementer of delegated programs, except where particular circumstances or the pursuit of specific goals would recommend otherwise. We also wholeheartedly agree with you that exceptions to this should be identified through close communication and involvement of upper management of both agencies.

From our point of view, examples of some of the types of situations that upper management might decide warrant EPA involvement in inspections and enforcement include:

- Emergency situations involving protection of public health and the environment
- Significant noncompliance that the state has not timely addressed
- Inspection or enforcement work requiring specialized EPA equipment or expertise
- Federal and State owned/operated facilities
- Actions of national interest or involving multiple state jurisdictions
- Program oversight inspections
- Response to MDNR's requests for assistance

With respect to the FY18 proposed inspection list, most of the facilities on that list do not involve particular circumstances that warrant EPA involvement, and we are prepared to defer to MDNR on the conduct of those inspections. On the other hand, we believe some of the facilities on the list do present circumstances where EPA involvement in the inspection is appropriate. We would like to meet with you and your senior managers to go through the list of proposed inspections and discuss the specific ones where we believe EPA involvement is warranted.




Your letter also touches on cooperative federalism as applied to permitting. We agree with the principle that EPA should focus its oversight efforts on periodically auditing state programs. However, we have found that early reviews of proposed permits can be beneficial and there are particular circumstances where EPA review of individual permits would be appropriate. One example would be permits that are not in accord with legal requirements of the Clean Water Act, Clean Air Act, or Resource Conservation and Recovery Act. Currently, we review CAA Prevention of Significant Deterioration Permit applications concurrent with MDNR providing technical assistance during development of the permit. This review results in any regulatory issues being addressed prior to permits being placed on public notice. For RCRA, we review draft permits and concur to allow for the elimination of EPA's Part II permit since MDNR is fully authorized. Under section 402(d) of the Clean Water Act, EPA reviews draft permits placed on public notice. If there are any legal sufficiency issues, receipt prior to public notice allows us to discuss and jointly reach a better understanding and work to a common resolution in advance of the full permit development, and avoid EPA commenting during the public notice period. We acknowledge that some of our past permit reviews might have focused on Federal policy choices rather than limiting the review to legal requirements. We hope that our narrowed focus on legal sufficiency when conducting permit reviews will allow us to continue our pre-public inter-governmental review and comment process. We look forward to further discussions with you on permitting roles and responsibilities.

These shifts in direction do represent significant change, and we are committed to working together with you to reach a common understanding on our respective roles. You point out, rightly so, that we may need to revisit overarching documents such as memoranda of understanding and performance partnership agreements. In the meantime, as we have conversations about inspections, enforcement actions and permitting the initial agreements on roles and responsibilities should be captured in writing to ensure staff in both agencies understand how environmental programs will be implemented in Missouri. We see our collaborative discussions with MDNR as an interfacing with the ECOS EPA workgroup on enforcement and our respective roles evolving as the workgroup results are implemented.

Our goal is to work together with you in close collaboration, mindful of our roles, to best use our collective resources and expertise to achieve compliance with the law and promote prosperity. We look forward to further conversations with you.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Chu', written over the word 'Sincerely,'.

Edward H. Chu

Deputy Regional Administrator